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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re N.A., a Person Coming Under the Juvenile
Court Law.

TULARE COUNTY HEALTH AND HUMAN
SERVICES AGENCY,

Plaintiff and Respondent,

v.

VICKY R.,

Defendant and Appellant.

F078701

(Super. Ct. No. JJV071686A)

OPINION

THE COURT*

APPEAL from an order of the Superior Court of Tulare County. Juliet Boccone,
Judge.

Matthew I. Thue, under appointment by the Court of Appeal, for Defendant and
Appellant.

Deanne H. Peterson, County Counsel, and Amy-Marie Costa, Deputy County
Counsel, for Plaintiff and Respondent.

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* Before Franson, Acting P. J., Snauffer, J. and DeSantos, J.

INTRODUCTION

Appellant Vicky R. (mother) is the mother of three-year-old N.A. (the minor). Mother appeals from the juvenile court's disposition order removing the minor from her custody pursuant to Welfare and Institutions Code¹ section 361.5 and granting Antonio A. (father) full legal and physical custody, with mother having supervised visitation. Mother contends substantial evidence does not support the removal of N.A. from her custody. We affirm.

FACTUAL AND PROCEDURAL SUMMARY

On July 25, 2018, the Tulare County Health and Human Services Agency (agency) received a referral regarding the minor. It was reported that the minor was underweight; a doctor had ordered the minor have Ensure to gain weight; the minor had a bruise on her lower back; mother was mentally unstable; and mother believed "all medication is poisoned."

The social worker attempted to meet with mother at her home but was unsuccessful. The social worker contacted father, who indicated mother's mental health had been deteriorating and mother was trying to find a way to take the then two-year-old minor to live in Mexico. Father stated mother claimed the "witches" found out where she lived; the "Looney Tunes" contaminated the water in her apartment; and her medication was poisoned. Father felt it was unsafe for the minor to be in mother's care.

Father indicated he had left the minor in the care of maternal relatives of the minor while he was at work. The social worker contacted the relatives, Delia and Lupe. Lupe told the social worker that mother's family was concerned about mother's "current mental state of mind" and that mother's condition worsened "by the day." According to Lupe, mother had been hospitalized at one point on a section 5150 hold and was diagnosed with clinical depression and schizophrenia. Lupe also told the social worker

¹ References to code sections are to the Welfare and Institutions Code.

that mother believed witches follow her and that witches and Looney Tunes contaminate her food and medication; mother wanted to move to Mexico because she believed “no one will follow her” there.

Delia expressed to the social worker many of the same concerns that Lupe expressed. In addition, Delia stated that mother recently had been watching the minor and another toddler but was unable to control and care for them. Mother called Delia to report “the devil” was in one toddler and the “child was possessed.” Delia arrived at mother’s home to find her “thinking irrationally,” so Delia collected both children and left. Delia had noticed circular marks on the minor’s lower back, which were faint pink in color.

The social worker met father at the apartment, where mother had been packing up the home to flee to Mexico. There was ample edible food in the apartment. Father stated he was sleeping while blocking the front door because he was afraid mother would flee with the minor while he slept. The social worker contacted mother, who admitted she wanted to flee to Mexico with the child because “too many bad things happen here.”

The minor was examined by a nurse on July 26, 2018, and found to be below the 5th percentile in weight and height. The child weighed 22 pounds nine ounces.

Mother and father, along with maternal family members, attended the “Team Decision Making” meeting held on July 26, 2018. The family members expressed concern that mother was not adequately feeding the minor because of mother’s expressed opinion that the food was poisoned. During the meeting, mother claimed the agency was part of the “Entity” that “was out to get her.” Mother claimed her former employer also was part of the Entity and put “something in her coffee at work.” Later that same day, mother called the social worker to accuse the social worker of breaking into her home and placing chemicals in her contact lens container. Mother also told the social worker that the minor was not safe with father because he “will rape her.” Mother also “pleaded” with the agency “not to kill her daughter.”

The agency concluded that mother's mental health status "seriously impairs" her ability to care for the minor and mother "is currently fixated on fleeing the country" with the minor. The agency recommended the minor be removed from mother's custody. The agency found father willing and able to care for the minor while mother "addresses her untreated mental health."

A section 300 petition was filed on behalf of the minor on July 30, 2018. The petition alleged the minor came within the provisions of section 300, subdivision (b)(1).

At the detention hearing, the juvenile court detained the minor from mother, allowed the minor to remain in father's care, and ordered mother be provided with supervised visits at the agency. Mother was not allowed at father's home and father was to call law enforcement if mother came to his home. The juvenile court also ordered that mother be offered a mental health assessment pending further proceedings.

The jurisdiction and disposition report filed on September 11, 2018, recommended the section 300 petition be found true; father be granted sole physical and legal custody of the minor; and the dependency be dismissed, with mother to receive once a week visitation supervised by a mutually agreed upon third party. The report noted mother had a criminal history, with convictions for willfully disobeying a court order and obstructing or resisting a public officer. Father had no criminal history.

The jurisdiction and detention report noted that after the detention hearing, mother reported that she had been prescribed Zoloft but stopped taking the psychotropic medication. Mother stated she had been seeing a therapist through Trinity Ministries. After the detention hearing, mother began calling the agency frequently after hours and speaking with the on-call social worker for extended periods of time. When mother met with the social worker on August 6, 2018, she was calm but confused as to why the minor had been removed from her custody and why the agency was involved.

In the August 6, 2018 meeting, mother admitted she had been diagnosed with schizophrenia and was prescribed medication for this in both Mexico and the United

States. Mother was no longer taking the United States' medication because she claimed it gave her a bad reaction; the medication from Mexico made her feel "good." Mother also told the social worker there were " '[L]ooney [T]unes' " in the area out to get her. Mother again told the social worker that she was receiving counseling through Trinity Ministries. She had been learning to cope with depression and anxiety through the counseling, which she began in 2014.

The following day, August 7, 2018, mother called the social worker 20 times. Mother also called other staff in the agency, asking the same questions repeatedly.

The social worker met with father on August 13, 2018. Father indicated that he and mother were married in 2016. Mother had changed and begun speaking of witches, Looney Tunes, and cartoon characters; and claimed there were people out to get her. Father was concerned about the negative impact mother's behavior would have on the minor. Father also told the social worker mother refused to eat home-cooked food, believing it was poisoned; she would eat only restaurant food. Since agency intervention, mother had been calling father constantly.

Mother continued to call the agency at all hours, sometimes yelling and swearing at the answering service. In a visit between mother and the minor on August 15, 2018, the social worker described mother as "emotional" and "crying uncontrollably." At the end of the visit, mother confronted father in the lobby and acted inappropriately in front of the minor and other families; agency staff had to intervene. The agency changed the visitation procedures to allow father to bring the minor in through a back door, so he would not encounter mother.

Parenting classes were offered to mother, but she had moved and stated she would find parenting classes on her own.

On September 6, 2018, father informed the agency he was going to Mexico to address his immigration status. He was leaving the minor in the United States with relatives. On September 18, 2019, mother called the agency and inadvertently admitted

she had visited the minor at the home of the paternal grandparents. A social worker reminded mother she was only allowed to visit the minor at the agency, and mother responded she had “rights.”

The paternal grandparents reported mother had visited their home multiple times since father left the country and called multiple times a day. The paternal grandparents finally allowed mother to see the minor because she was showing up at their home at all hours.

Mother notified the juvenile court she was unable to attend a scheduled October 1, 2018 hearing. When the social worker contacted mother about her inability to appear, mother stated she had moved to Baja California, Mexico and did not have transportation to return. Mother refused to provide her new address. Mother was not certain she would be able to attend a scheduled visit with the minor on October 3, 2018. Mother also stated she had not attended any parenting classes because that would be admitting she abused her child.

Father appeared with the minor for the October 3, 10:30 a.m. visit. Mother was contacted by phone and indicated she was getting on a bus and would be there around 5:00 p.m. She wanted her visit moved to 5:00 p.m., and the social worker stated that was not possible.

The following day, October 4, the social worker received a call from the maternal aunt, who had been providing care for the minor when father was at work. Mother appeared at the maternal aunt’s home and demanded she hand the minor over to mother, so mother could take the minor to Mexico. When mother refused to leave, the maternal aunt called law enforcement.

Mother met with the social worker in person on October 5, 2018. Mother failed to appear for the October 8 visitation. The social worker called mother, who stated she had no home, money, or transportation and was living in Baja California, Mexico and could not attend the visit.

Mother appeared for the contested jurisdiction hearing on October 15, 2018. Mother claimed the minor was a picky eater; claimed she had finished her medication; and denied ever speaking of witches or stating that food and medication was poisoned. Mother never claimed Looney Tunes had contaminated the water. Mother did admit wanting to take the minor to live in Mexico.

When asked why she had expressed a fear father would rape the minor, mother variously did not remember the conversation, stated it was “just a normal concern a mom would have” and then commented that since “Trump went into office and made that allegation, saying, you know, all those Mexican males are rapists and stuff, he just kind of like opened—some people’s eyes, I guess, in a sense.”

Mother testified she called the agency frequently because having her daughter taken from her caused anxiety attacks and she needed “somebody to talk to.”

The juvenile court sustained the petition. The disposition hearing was continued to allow mother an opportunity to produce evidence of current mental health treatment.

On October 31, 2018, mother’s therapist at Trinity Ministries called the social worker to report concerns with mother’s behavior. The therapist believed mother needed a higher level of care than she could provide and would be closing mother’s file.

The agency filed an addendum report on November 6, 2018. The addendum noted that mother had been referred for a mental health assessment. At an October 30, 2018 assessment, mother displayed poor insight into her illness and had a flat affect. Mother had delusions of identifying witches, claimed she was being attacked by lunatics, and stated devils and others wanted her to relocate to Mexico. Mother was diagnosed with schizophrenia and delusional disorder, persecutory type.

Mental health records showed that mother was receiving mental health treatment in 2011 after pulling a knife on a police officer. She began treatment, but then failed to show and ceased treatment. Mother also was referred for mental health treatment in 2015 after she presented with paranoid delusions.

On November 16, 2018, mother filed a section 388 petition seeking legal and physical custody of the minor.

On November 21, 2018, mother expressed the opinion that she did not need to receive mental health services from Tulare County.

At the November 26, 2018 disposition hearing, the juvenile court denied mother's section 388 petition. All parties submitted on the reports for disposition. The juvenile court awarded sole legal and physical custody to father because he had not "shown any issues, as far as being able to parent" and ordered that jurisdiction terminate. The juvenile court ordered that the minor be removed from mother's custody pursuant to section 361, subdivision (c)(1) finding that placement with mother created a substantial danger to the health, safety, or physical or emotional well-being of the minor and there was no reasonable means by which the minor could be protected short of removal from mother.

After the court articulated its decision, father asked that mother be directed to turn over the minor's passport and social security card. Mother refused the juvenile court's request.

Mother filed a notice of appeal on January 8, 2019, stating she was appealing the removal of the minor from her custody.

DISCUSSION

Mother argues in this appeal that there was not substantial evidence to support the juvenile court's removal of the minor from her care. (*Francisco G. v. Superior Court* (2001) 91 Cal.App.4th 586, 600.) When the juvenile court orders a child removed from parental custody under section 361, it must first determine whether there is a noncustodial parent who desires custody of the child. If that parent requests custody, the court must place the child with that parent unless it finds that placement with that parent would be detrimental to the child. If the court places the child with that parent, the court can grant

the parent legal and physical custody and terminate jurisdiction, as the juvenile court did here when it awarded full legal and physical custody to father. (§ 361.2, subd. (b).)

Standard of Review

We review the juvenile court's removal order for substantial evidence. (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1433.) "This court has neither the duty nor the right to resolve conflicts in the evidence, pass on the credibility of the witnesses, or determine where the preponderance of the evidence lies. The trier of fact decides each of these matters; our power on appeal begins and ends with a determination as to whether or not there is any substantial evidence, whether or not contradicted, which will support the conclusion of the trier of fact. We resolve all conflicts in favor of the respondent on appeal and give respondent the benefit of all legitimate and reasonable inferences. Where the facts reasonably support more than one inference, we may not substitute our judgment for that of the trier of fact. Considering only the evidence favorable to respondent, the question is whether that evidence is sufficient as a matter of law. If so, we must affirm the judgment." (*In re Walter E.* (1992) 13 Cal.App.4th 125, 139–140; see also *In re Katrina C.* (1988) 201 Cal.App.3d 540, 547.)

Substantial Evidence Supports Removal

Regarding mother's claim that the juvenile court did not recite on the record the factual basis for its order, the juvenile court did specifically refer to and adopt the detailed findings set forth in the agency's report. To the extent the juvenile court's failure to articulate factual findings is error, any error is harmless because an appellate court may imply the factual findings from the record on appeal. (See *In re Jason L.* (1990) 222 Cal.App.3d 1206, 1218–1219; *In re Corienna G.* (1989) 213 Cal.App.3d 73, 83.)

In order to remove a child from parental custody under section 361, subdivision (c)(1), the juvenile court must find, by clear and convincing evidence, that there would be a substantial danger to the child's physical or emotional well-being if

returned to the parent's custody and there are no reasonable means by which the child can be protected without removal. (§ 361, subd. (c)(1).) There is no requirement that the child actually suffer harm; the focus is on preventing harm to the child. (*In re Jamie M.* (1982) 134 Cal.App.3d 530, 536.)

Mother had been diagnosed with schizophrenia and delusional disorder, persecutory type, but expressed the opinion that she did not need to receive mental health services from Tulare County. Mother's mental health issues were long-standing. Mental health records showed that mother was receiving mental health treatment in 2011 after pulling a knife on a police officer. She began treatment, but then failed to show and ceased treatment. Mother also was referred for mental health treatment in 2015 after she presented with paranoid delusions.

As of October 30, 2018, mother displayed poor insight into her mental illness and had a flat affect. Mother was exhibiting delusions of identifying witches, claimed she was being attacked by lunatics, and stated devils and others wanted her to relocate to Mexico.

Here, mother's untreated mental health issues caused her to suffer from delusions, including believing that food was poisoned, and the minor was underweight and not receiving adequate nourishment when the section 300 petition was filed. Mother continuously expressed a desire to flee with the minor to Mexico. Mother maintained an inappropriate and unfounded delusion that father would rape the minor.

At the time of disposition, mother's mental health issues were not being treated because mother declined treatment through Tulare County. Mother also failed to participate in parenting classes, again declining classes offered by Tulare County and claiming she would find parenting classes on her own. The disposition hearing had been continued to allow mother to produce evidence that she was undergoing current mental health treatment. Mother did not produce any evidence of this.

When the evidence establishes that mother has long-standing mental health issues and refuses or discontinues treatment; suffers from delusions that prevent her from adequately feeding the minor; fails to attend parenting classes; and continues to assert that she wants to flee to Mexico with the minor, substantial evidence supports the removal of the minor from mother's custody. Mother's untreated mental illness, her failure to participate in current treatment, and failure to participate in parenting services are grounds for removal. (See *In re Alexander C.* (2017) 18 Cal.App.5th 438, 452.)

Mother, however, contends that removal was not necessary. She maintains she could have been ordered to undergo mental health treatment, turn over the minor's passport, and care for the minor in a supervised setting. Mother did not argue at disposition that she would be amenable to these conditions in order to avoid having the minor removed from her custody. In fact, mother's actions at and shortly before disposition indicated she would not comply with the court's orders. Mother was asked by the juvenile court to turn over the minor's passport at disposition; she adamantly refused. Mother did not believe she needed to receive mental health services from Tulare County and did not present any evidence of undergoing current mental health treatment at disposition.

Furthermore, it is doubtful any arrangements for mother to care for the minor in a supervised setting could be put into place. Mother was generally not welcome anymore in the homes of relatives. Father was concerned about the negative impact mother's behavior with untreated mental illness would have on the minor. The minor was under three years old and, therefore, not capable of speaking up for herself or defending herself from any actions of mother. Mother's untreated mental illness would present a danger to the minor's emotional well-being, even if such an arrangement could be put into place.

DISPOSITION

The juvenile court's order removing the minor from mother's custody and granting sole legal and physical custody to father is affirmed.